

No. 14-4245

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MARK T. ALBRECHTA

Defendant-Appellant,

v.

UNITED STATES OF AMERICA

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RESPONSE TO THE UNITED STATES' MOTION TO DISMISS

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INTRODUCTION

Mark T. Albrehta (“Albrehta”) seeks to appeal the district court’s final judgment entered on January 10, 2014. (*United States v. Albrehta*, No. 3:13-cr-128; Doc. No. 47.) Albrehta admits that he filed late his notice of appeal. Nevertheless, Albrehta requests that the Court consider his appeal because its consideration will not prejudice the judicial administration of criminal claims nor waste judicial resources because of undue delay.

BACKGROUND

Albrehta pleaded guilty to the following: (1) one count of conspiracy to distribute and possess with the intent to distribute five hundreds grams or more of cocaine hydrochloride in violation of 21 U.S.C. §§ 841(b)(1)(B) and 846; and (2) one count of possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1).¹ On January 10, 2014, Albrehta was sentenced to 108 months’ imprisonment on both counts, the sentences to run concurrently. On March 17, 2014, Albrehta filed a letter with the district court seeking legal assistance to file a petition for habeas corpus, which the district court construed as a notice of appeal. (Doc. No. 51-1.)

¹ Albrehta pleaded guilty under the terms of a plea agreement. Admittedly, the plea agreement contained a waiver of appeal rights.

ARGUMENT

A notice of appeal in a criminal case must be filed within fourteen days of judgment. Fed. R. App. P. 4(b). If the notice of appeal is not filed within the fourteen-day appeal period, but within 30 days after expiration of the appeal period, a defendant may file in the district court a motion to extend the time to file a notice of appeal for “excusable neglect or good cause.” Fed. R. App. P. 4(b).

Albrechta’s notice of appeal was filed over two months after entry of judgment. Even giving Albrechta the benefit of the “mailbox rule” for prisoners, *see* Fed. R. App. P. 4(c), his notice of appeal was filed out of time and outside the 30-day period to permit him to claim excusable neglect.²

Still, the appeal period in a criminal case is not a jurisdictional provision, but, rather, a claims-processing rule. *Bowles v. Russell*, 551 U.S. 205, 209–14 (2007); *United States v. Urutyan*, 564 F.3d 679, 685 (4th Cir. 2009). This Court may therefore proceed to consider the merits of the appeal even over the Government’s objection. This Court should hear Albrechta’s appeal because his delay was not inordinately long and the judicial resources of this Court will not be wasted as Albrechta has meritorious arguments to challenge the length of his

² Albrechta claims he did not file a timely appeal because his trial counsel told him that if he did, statements he made earlier to federal officers “could . . . be used against [him].” (Doc. No. 51.)

sentence. Albrechta therefore respectfully requests that the Court deny the Government's motion to dismiss.

CONCLUSION

This Court should deny the Government's motion to dismiss and permit Albrechta's appeal to be heard on the merits.

Respectfully submitted, this the 16th day of June 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, I sent a copy of the foregoing to all counsel appearing in the case through the Court's CM/ECF system.

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